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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

August 6, 2009

The Honorable Jeff Sessions  
The Honorable Orrin G. Hatch  
The Honorable Charles E. Grassley  
The Honorable Jon Kyl  
The Honorable Lindsey Graham  
The Honorable John Cornyn  
The Honorable Tom Coburn  
Committee on the Judiciary  
United States Senate  
Washington, D.C. 20510

Dear Senators:

I write to request that you place a hold on the nomination of Mr. Tom Perez to be Assistant Attorney General of the Civil Rights Division at the Department of Justice (the Department). I ask that the hold remain in effect until the Department provides Congress with sufficient information about the sudden dismissal of a case alleging voter intimidation by the New Black Panther Party on Election Day 2008.

Since May, Members of Congress repeatedly have requested information regarding the Department's unexpected reversal in the New Black Panther Party case. The Department did not respond to these inquiries until mid-July, when Members were in our final push toward recess. The answers provided thus far by the Department have been overly vague, raising concerns about possible political interference in this case.

Further, I am concerned that to the extent to which the Department has attempted to explain itself, its answers do not reflect what I have come to learn are the real facts underlying the Department's recent actions. Attached is a copy of correspondence between Minority Members of the Committee and the Department in which you will find more detail about the New Black Panther Party's alleged wrong-doing and the Department's actions that prompted our inquiries. Also attached is a recent *Washington Times* article revealing additional details on the Department's actions in this matter.

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August 6, 2009

Voter intimidation threatens democracy. If the Department's political appointees applied pressure to career attorneys to dismiss this case, then they have committed an offense that undermines every American's right to choose their elected officials. Transparency to Congress on a matter as important as voter intimidation is critical to preserving our Democracy.

I am currently working with the Department to schedule a briefing on this matter. I have also written to the Department expanding upon my initial questions. I respectfully request that you place a hold on Mr. Perez's nomination until the Department clearly addresses the questions raised in our correspondence and articulates its justification for dismissing this case.

I appreciate your consideration of my request.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive, flowing style.

Lamar Smith  
Ranking Member  
Committee on the Judiciary

cc: The Honorable John Conyers, Jr.  
The Honorable Patrick Leahy  
The Honorable Harry Reid  
The Honorable Mitch McConnell

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"VACANT"

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May 28, 2009

Ms. Loretta King  
Acting Assistant Attorney General  
Civil Rights Division  
U.S. Department of Justice  
Washington DC 20530

Dear Ms. King,

It has come to my attention that on Election Day 2008, several members of the New Black Panther Party intimidated voters at a polling place in Philadelphia. These members brandished a baton in a threatening manner and made verbal threats to potential voters. After investigating the incident, the Civil Rights Division filed a complaint against the New Black Panther Party and several of its members for violations of Section 11(b) of the Voting Rights Act, which prohibits any "attempt to intimidate, threaten, or coerce" any voter and those aiding voters.

I understand that neither the New Black Panther Party nor its members filed a response to the complaint or any motion. As a result, the federal judge directed the Division to file a motion for a default judgment against the Party and its members. Instead of submitting the default judgment against the Party and its members to the court for signature, however, I understand the Division voluntarily moved to dismiss the complaint, even though it had effectively won the case.

This case was an uncontested lawsuit against defendants including one who, by the terms of the Division's own complaint, had "made statements containing racial threats and racial insults at both black and white individuals," and who "made menacing and intimidating gestures, statements, and movements directed at individuals who were present to aid voters." That individual, Jerry Jackson, had been carrying credentials as a member of the local Democratic committee. The Division sought relief only against the one defendant who carried and waived a baton on Election Day, and not against Mr. Jackson, and it sought only to enjoin that defendant from "displaying a weapon within 100 feet of any open polling location" in Philadelphia.

Ms. Loretta King  
Page Two  
May 28, 2009

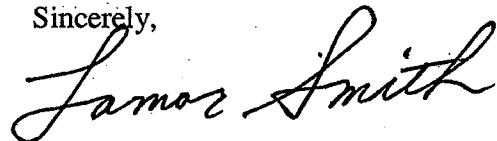
These actions raise a number of troubling questions. For example, why did the Civil Rights Division voluntarily dismiss a lawsuit that it had effectively already won, against defendants who were physically threatening voters? Is the Division concerned that this dismissal will encourage the New Black Panther Party, or other groups, to intimidate voters? Why did the Division seek such limited relief against a defendant who was actually carrying and brandishing a weapon at a polling station on Election Day? What role did the change of administrations play in the unusual resolution of voluntarily dismissing a case on which the Division had already prevailed?

In an effort to obtain answers to these and related questions, I request that the appropriate employees of the Division brief my staff regarding this lawsuit and the circumstances surrounding its dismissal. I am also requesting all non-privileged documents relating to the Division's dismissal of the suit.

Please respond to Crystal Jezierski, minority chief oversight counsel, or Paul Taylor, minority chief counsel on the Subcommittee on the Constitution, Civil Rights, and Civil Liberties at (202) 225-6906 by June 19 to arrange the briefing and the document delivery.

Thank you for your prompt consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive, flowing style.

Lamar Smith  
Ranking Member

cc: The Honorable Ron Weich  
The Honorable John Conyers, Jr.  
The Honorable Jerrold Nadler  
The Honorable F. James Sensenbrenner, Jr.

**Congress of the United States**  
**Washington, DC 20515**

July 9, 2009

The Honorable Glenn A. Fine  
Inspector General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Mr. Inspector General,

We write today to request that you investigate whether improper political considerations led the Justice Department to dismiss a voter intimidation case it previously brought against the New Black Panther Party and two individuals affiliated with it. Following the dismissal, Judiciary Committee Ranking Member Lamar Smith and Ranking Member Frank Wolf each submitted letters to the Justice Department requesting information regarding the decision to drop the voter intimidation charges. To date, the Department has not responded to either request. Copies of the letters are attached.

The dismissal of the Department's case against the New Black Panther Party raises significant concerns about possible politicization of the Justice Department. The case in question was filed by the Department against members of the New Black Panther Party and two individuals affiliated with it. Significantly, one of those individuals carried credentials indicating he was a member of the local Democratic Committee. As both of our letters recount, the individuals are alleged to have engaged in brazen acts of voter intimidation outside of polling locations in Philadelphia, Pennsylvania, on Election Day 2008. After reviewing the facts, the Justice Department brought charges against the two individuals and the Party under the Voting Rights Act.

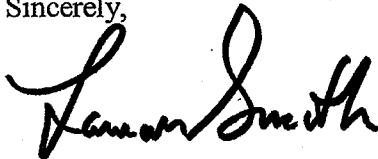
Despite the fact that a judge essentially ruled in favor of the Justice Department's complaint when the defendants failed to respond to the allegations, the Civil Rights Division under the Obama Administration decided to dismiss the case instead of obtaining a default judgment. We are unaware of any changes in the facts underlying this case between the Department's filing of its initial complaint and the subsequent filing of its motion to dismiss. Nor are we aware of any allegations of prosecutorial misconduct in the bringing of the initial complaint.

As Inspector General of the Justice Department, you spent more than a year investigating allegations of wrongful political influence in the removal of several U.S. Attorneys. Allegations of wrongful political influence by Obama Administration officials in the dismissal of a voting rights case are equally important and should be subject to an equally thorough investigation.

Voter intimidation threatens the very core of democracy. The American people need to know that the Justice Department takes seriously cases of voter intimidation, regardless of the political party of the defendants. We respectfully request that you open an investigation into the dismissal of the Black Panther Case and report to Congress.

We appreciate your timely consideration of our request.

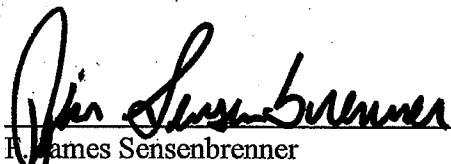
Sincerely,



Lamar Smith  
Ranking Member  
House Judiciary Committee



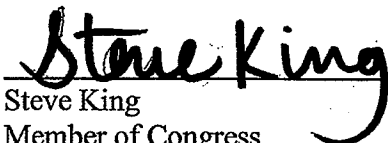
Frank Wolf  
Ranking Member  
Commerce, Justice, Science Subcommittee  
House Appropriations Committee



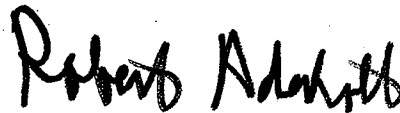
James Sensenbrenner  
Ranking Member  
Constitution, Civil Rights, Civil Liberties  
Subcommittee  
House Judiciary Committee



John Culberson  
Member of Congress



Steve King  
Member of Congress



Robert Aderholt  
Member of Congress




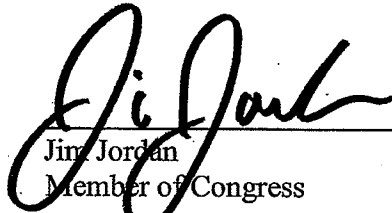
Trent Franks  
Member of Congress



Jo Bonner  
Member of Congress

The Hon. Glenn A. Fine  
July 9, 2009  
Page 3

  
\_\_\_\_\_  
Louie Gohmert  
Member of Congress

  
\_\_\_\_\_  
Jim Jordan  
Member of Congress



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 13, 2009

The Honorable Lamar S. Smith  
Ranking Member  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Smith:

This responds to your letter, dated June 8, 2009, concerning *United States v. New Black Panther Party for Self-Defense*, Civ. No. 09-0065 SD (E.D. Pa.), a case filed to enforce Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. § 1973i(b).

This case was filed on January 9, 2009. The United States obtained an injunction against a defendant who held a nightstick in front of a polling place in Philadelphia, Pennsylvania. The injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment, and the Department will fully enforce the terms of the injunction.

The Department voluntarily dismissed the Section 11(b) claims against three other defendants named in the complaint because the facts and the law did not support pursuing those claims against them. That decision was made after a careful and thorough review of the matter by the Acting Assistant Attorney General for Civil Rights, a career employee with nearly 30 years experience in the Department, including nearly 15 years as the career Deputy Assistant Attorney General for Civil Rights.

Although, as you note, these defendants failed to respond to the complaint, that does not mean the Department "had effectively won the case" against them. The Court of Appeals for the Third Circuit "does not favor entry of defaults or default judgments." *United States v. \$55,518.05 In U.S. Currency*, 728 F.2d 192, 194 (3d Cir. 1984). Rather, it is its "preference that cases be disposed of on the merits whenever practicable." *Hritz v. Woma Corp.*, 732 F.2d 1178, 1181 (3d Cir. 1984); see also *Hill v. Williamsport Police Dept.*, 69 Fed. Appx. 49, 51 n.3 (3d Cir. 2003) (factors to consider in granting a default judgment include "whether material issues of fact



or issues of substantial public importance are at issue"). Accordingly, an entry of a default judgment in the district court is not automatic. Moreover, even if a court were to grant a default judgment on liability, the court still would need to assess the propriety of any requested injunction. *Broadcast Music, Inc. v. Sprint Mount Area Bavarian Resort, Ltd.*, 555 F. Supp. 2d 537, 543 (E.D. Pa. 2008) (granting injunctive relief following entry of default judgment only after considering propriety of remedy sought); cf. *Shields v. Zuccarini*, 254 F.3d 476, 482 (3d Cir. 2001) (identifying factors a court must consider before granting permanent injunctive relief).

Section 11(b) prohibits intimidation, threats or coercion of "any person for voting or attempting to vote, or ... for urging or aiding any person to vote or attempt to vote." The United States is authorized to enforce Section 11(b) through civil litigation and to obtain declaratory and injunctive relief. For a variety of reasons, including the limited remedies available under Section 11(b), the Department has filed only three cases under this provision in the three decades for which we have reliable records on the subject. Indeed, in the 44 years since Congress passed the Voting Rights Act, fewer than 10 reported cases have ever been brought by any party prior to the case in question.

In *U.S. v. New Black Panther Party for Self-Defense*, the district court found that the United States had alleged that Minister King Samir Shabazz "stood in front of the polling location at 1221 Fairmont Street in Philadelphia, wearing a military-style uniform, wielding a nightstick, and making intimidating statements and gestures to various individuals, all in violation of 42 U.S.C. § 1973i(b)." Order, dated May 18, 2009, at 1, and entered judgment "in favor of the United States of America and against Minister King Samir Shabazz, enjoining Minister King Samir Shabazz from displaying a weapon within 100 feet of any open polling location on any election day in the City of Philadelphia, or from otherwise violating 42 U.S.C. § 1973i(b)." Judgment, dated May 18, 2009. We believe this injunction is tailored appropriately to the scope of the violation and the requirements of the First Amendment. We intend to enforce fully the terms of this injunction. Section 11(b) does not authorize other kinds of relief, such as monetary damages or civil penalties.

The United States had, prior to these rulings, voluntarily dismissed claims against the three other defendants named in the complaint: The New Black Panther Party for Self-Defense ("the Party"), Malik Zulu Shabazz and Jerry Jackson. The Department considered not only the allegations in the complaint, but also the evidence that had been amassed by the Department to support those allegations.

The complaint alleges that the Party "made statements and posted notice that over 300 members of the New Black Panther Party for Self-Defense would be deployed at polling locations during voting on November 4, 2008, throughout the United States." Complaint, para.

The Honorable Lamar S. Smith  
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12. Notably, the complaint does not allege that those statements or the notice called for any Party member to display weapons at polling locations or do anything that would violate Section 11(b). Nor is there any allegation in the complaint that Malik Zulu Shabazz made any such statement in advance of the election.

The complaint does allege that the Party and Malik Zulu Shabazz "managed" and "directed" "the behavior, actions and statements of Defendants Samir Shabazz and [Jerry] Jackson at [the Philadelphia polling place], alleged in this Complaint." Complaint, para. 12. The Department considered the evidence developed to support this allegation and concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

The complaint also alleges that the Party and Malik Zulu Shabazz "endorsed" the alleged activities at the Philadelphia polling place after the election. Even assuming that a post-event "endorsement" is sufficient to impose Section 11(b) liability, the Department found the evidence on this allegation to be equivocal. The Party posted statements on its web site specifically disavowing the Philadelphia polling place activities and suspending the Party's Philadelphia chapter because of these activities.

With regard to the alleged activities at the Philadelphia polling place, the Department concluded that the allegations in the complaint regarding Samir Shabazz, the person holding the nightstick, were sufficient to state a claim under Section 11(b) and that the evidence developed supported those allegations. As noted above, we therefore sought and obtained a judgment against this defendant and appropriately tailored injunctive relief.

The Department decided not to proceed with its claims against Jerry Jackson, who was a resident of the apartment building where the polling place was located and was certified by city officials as a poll watcher. The local police officers who were called to the polling place ordered Samir Shabazz to leave the polling place, but allowed Jackson to remain. Considering the contemporaneous response of the local police officers to Jackson's activities, as well as the evidence developed to support the allegations against Jackson, the Department concluded that the factual contentions in the complaint did not have sufficient evidentiary support.

You have requested "all non-privileged documents relating to the Division's dismissal of the suit" and we have determined that the only such documents are the notice of dismissal and the court's Order, both of which are enclosed. You also have requested that the appropriate Department employees brief your staff, and we have already contacted your office to arrange a briefing.

We can assure you that the Department is committed to comprehensive and vigorous enforcement of both the civil and criminal provisions of federal law that prohibit voter

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intimidation. We continue to work with voters, communities, and local law enforcement to ensure that every American can vote free from intimidation, coercion, or threats.

We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance with this or any other matter.

Sincerely,



Ronald Weich  
Assistant Attorney General

Enclosures

cc: The Honorable John Conyers  
Chairman  
Committee on the Judiciary

The Honorable Jerrold Nadler  
Chairman  
Subcommittee on the Constitution, Civil Rights and Civil Liberties

The Honorable F. James Sensenbrenner, Jr.  
Ranking Member  
Subcommittee on the Constitution, Civil Rights and Civil Liberties

**Congress of the United States**  
**Washington, DC 20515**

July 17, 2009

The Honorable Eric Holder  
Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Attorney General Holder:

Thank you for the July 13, 2009, letter we received from Assistant Attorney General Ronald Weich responding to our concerns about the Department's highly unusual (if not unprecedented) dismissal of its Voting Rights Act (VRA) lawsuit against the New Black Panther Party and its members in the wake of the district court's offer to grant the United States a default judgment. We appreciate the Department's response and commitment to brief us and other members on this case. In advance of those briefings, we would like to share with you in more detail some specific concerns we have about the Department's actions in this matter. We ask that the Department be prepared to address these questions when it briefs Members of Congress on this matter in the coming weeks.

The Department maintains that the decision to dismiss the case against three Defendants – the New Black Panther Party, its Chairman, Malik Zulu Shabazz, and Jerry Jackson – was fully justified. This conclusion is based, in part, on the view that the New Black Panther Party's publicly announced plan to position several hundred of its members at polling places on election day did not violate Section 11(b) of the VRA because the announcement did not go so far as to expressly call on party members to "display weapons" at the polls. The fact that at least one New Black Panther Party member actually appeared at a polling place on Election Day with a weapon, and another member stood side-by-side in formation with his armed colleague in an effort to intimidate potential voters, does not change the Department's analysis.

However, to suggest that the New Black Panther Party failed to contravene the VRA merely because it avoided any reference to "weapons" in its pre-Election Day announcement eviscerates critical civil rights protections and establishes a dangerous precedent. Is the Justice Department's position now that a paramilitary organization is free to send its members en masse to polling places – in uniform no less – without fear of legal repercussions, as long as there is no explicit mention of weaponry? Had the Ku Klux Klan or Aryan Brotherhood made a similar announcement prior to November 4, 2008, would the Civil Rights Division have viewed the group's failure to mention weapons as an exculpatory omission?

The Hon. Eric Holder  
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A violation of Section 11(b) does not require the use of weapons, or even the threat to use weapons. The appearance of uniformed members (at least one of whom was armed) of the New Black Panther Party is exactly the kind of conduct that Section 11(b) was intended to address. The fact that the New Black Panther Party was clever enough not to publicly call for the use of weapons does not – nor should not – absolve the organization of liability.

The Department's response also states that the Division did not find sufficient evidence that the New Black Panther Party and Malik Zulu Shabazz managed, directed, or endorsed the behavior of the other Defendants. This conclusion appears, however, to be directly contradicted by statements made by Mr. Shabazz on national television on November 7, 2008. In an interview, Mr. Shabazz claims that his activities in Philadelphia were part of a nationwide effort involving hundreds of party members, and that the display of the weapons was a necessary part of the New Black Panther Party deployment.

It could be argued that this admission, standing alone, should settle the issue. At a minimum, however, the Department should have responded by at least conducting a deposition of the Defendants and engaging in some minimal discovery to determine the full composition and character of the Defendants' intimidating activities. For the Department to state that there was not sufficient evidence to support proceeding against a party chairman who admits that weapons were part of a nationwide deployment is remarkable. It is unclear from your response whether or not Civil Rights Division attorneys actually interviewed Mr. Shabazz, and, if so, what the results of that interview were. We have a strong suspicion that, given Mr. Shabazz's statements to the national media, any interview conducted by Civil Rights Division attorneys would have yielded similarly useful evidence. The fact that the Defendants did not respond to the complaint, however, leads us to believe that no discovery took place in the case.

In addition, we wonder whether the videos and statements that can be found on the Internet, produced by organizations such as the Anti-Defamation League, were considered to provide context to the violent nature of the New Black Panther Party deployment on November 4, 2008. If so, we would request that you provide the undersigned a list of the videos and statements that the Department considered before dismissing the case against the New Black Panther Party and Malik Zulu Shabazz.

Additionally, the Department maintains that the case was dismissed because the New Black Panther Party disavowed the actions in Philadelphia *after* the election. Yet on May 4, 2009, the Civil Rights Division filed a response to a motion for partial summary judgment by the defendants in a housing discrimination lawsuit in Kansas that took exactly the opposite position. In *U.S. v. Sturdevant*, the defendants argued that the case should be dismissed because they fired the employee accused of discriminatory conduct, had not authorized such conduct, and no longer owned the apartment property where the

The Hon. Eric Holder  
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Page Three

discrimination occurred. The Department argued in its response brief that the case should not be dismissed because there were still disputed issues of material facts regarding which of the defendants' employees were ultimately responsible for monitoring and correcting the employee's discriminatory conduct, when the defendants knew about the discrimination, and what steps were taken to correct the problem. The Department's brief in that case also argued that even if the defendants were *now disavowing* the discriminatory actions of their former employee, there were no assurances that the defendants' failure to "train, monitor, and discipline" the former employee would not be repeated with other employees at other properties owned by the defendants. *See United States v. Sturdevant*, Case No. 2:07-02233 (D. Kan.), United States' Response to the AIMCO Defendants' Motion for Partial Summary Judgment, pages 10-12.

The same principle is at play in the New Black Panther Party case. By not engaging in discovery and eschewing a default judgment, the Department has no assurances that the New Black Panther Party will not engage in exactly the same type of behavior again. Nor are there any assurances that the New Black Panther Party will "train, monitor, and discipline" its members so that the behavior that occurred in Philadelphia will not be repeated in future elections. In fact, we would not be surprised if the members of the New Black Panther Party will likely be encouraged to engage in similar activities given the likely minimal deterrent effect of the sanctions levied against it after its reprehensible conduct last fall.

Turning to Defendant Jerry Jackson, your letter cites a variety of reasons for the voluntary dismissal. One of these is the "contemporaneous response" of the local Philadelphia police officers as justifying the dismissal against Mr. Jackson, in so far as they did not arrest or remove him. We urge you to reconsider this position. Whether or not Federal law has been violated is not determined by the behavior of local law enforcement officials, and we are unaware of the Civil Rights Division ever taking such a position before. In this vein, we would request that you provide any interview notes members of the career trial team made upon interviewing the local police officers. These attorneys' interview notes regarding their impressions of the local police officers is of critical importance given the weight the Department placed upon the officers' actions when deciding to dismiss the charges against Mr. Jackson.

Reports indicate that the Department had sworn statements from multiple victims that Mr. Jackson stood in formation with the armed Defendant, Samir Shabazz, and attempted to block the entrance to the polls. Messrs. Jackson and Shabazz were identically dressed. Their military uniforms alone were intimidating. Others, including voters, witnessed their behavior. We thus ask that you provide us with the executed sworn statements of witnesses Bartle Bull, Christopher Hill, Michael Mauro, and any other witnesses of which we may be unaware.

The Department's response also suggests that the First Amendment was somehow implicated by a publicly announced nationwide plan to position paramilitary members of an organization at the entrance to a polling location. However, the First Amendment would implicate only the scope of any remedy, not underlying liability. For example, statements and party activities may be protected by the First Amendment, but would still be admissible evidence to show that the Voting Rights Act was violated. Although the Defendants may have exercised their First Amendment Rights in making statements that they intended to implement a nationwide plan to place uniformed members at the entrance to polls, such statements would still be admissible to demonstrate liability even if they cannot be enjoined.

In addition to the above questions we would also ask that the Department be prepared to reply to the following questions:

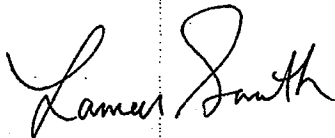
- Is the FBI aware of the activities of the Defendants, and if so, what is its assessment of their behavior and threatening nature? Does the FBI share your characterization of the response of local law enforcement officials on the scene, assuming it is accurate?
- What did the Department do to determine the extent of New Black Panther Party members deploying in other locations throughout the United States before dismissing the case? Did the Department's political appointees inquire about the possibility of a nationwide Panther deployment?
- Although the Department maintains that there was insufficient evidence to proceed to default against the New Black Panther Party and its Chairman Malik Zulu Shabazz, we are not aware that any discovery was conducted by the Department. Why, then, would the Department not simply have informed the District Court that it did not wish a default finding against the three defendants and instead wished to proceed to full discovery? This approach would have enabled the Department to resolve any evidentiary uncertainties and ensure a vigorous enforcement of voter intimidation statutes.
- Has the Department provided all communications with third-party interest groups about the case? For example, if memoranda or emails from third-party interest groups were sent to the Department or any official at the Department, such documents would not be privileged as you well know.
- Did Department staff apart from the four-person career trial team engage in any discussions with Defendants or their representatives? Did current Department political appointees conduct discussions with the Defendants or their agents prior to January 20? If so, have they recused themselves? Are there any career

The Hon. Eric Holder  
July 17, 2009  
Page Five

attorneys in the Voting Section or the Civil Rights Division who worked on the case besides the four Section attorneys named on the pleadings?

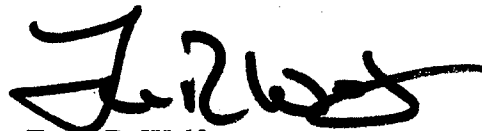
- What specific new facts did the Department learn between the filing of the complaint and its dismissal that caused the Civil Rights Division lawyers who had approved the filing of the suit in January to change their position and decide that the suit could not be maintained against those defendants against whom the suit was dismissed? How did the Department come to learn about those specific facts?

We appreciate your attention to this important matter and look forward to the Department's briefing.



Lamar Smith  
Ranking Member  
Committee on the Judiciary

Sincerely,



Frank R. Wolf  
Ranking Member  
Commerce-Justice-Science  
Subcommittee House Appropriations  
Committee

cc: The Honorable John Conyers, Jr.





U.S. Department of Justice

Office of the Inspector General

---

July 21, 2009

The Honorable Lamar S. Smith  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Smith:

This responds to your letter of July 9, 2009, in which you and nine other Members of the House of Representatives asked the Office of the Inspector General (OIG) to investigate whether improper political considerations led the Department of Justice (DOJ) to dismiss a voter intimidation case against members of the New Black Panther Party. We are sending a similar response to the other nine Members who signed the July 9 letter.


The OIG has the authority to investigate allegations of employee misconduct in all DOJ components, except for the jurisdiction specifically conferred on the DOJ's Office of Professional Responsibility (OPR). OPR has the authority to investigate allegations involving DOJ attorneys (or investigators working under the direction of DOJ attorneys) acting in their capacity to litigate, investigate, or provide legal advice.

The issue in your letter is DOJ attorneys' dismissal of voter intimidation claims against several defendants, a matter that falls squarely within the jurisdiction of DOJ OPR. We have contacted OPR, and it also believes this matter falls within its jurisdiction, not the OIG's.

Therefore, we are forwarding your letter to OPR for its review and handling.

If you have additional questions, please contact me or Deputy Inspector General Paul Martin.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn A. Fine". The signature is fluid and cursive, with the first name "Glenn" being more prominent.

Glenn A. Fine  
Inspector General

cc: Mary Patrice Brown  
Counsel, Office of Professional Responsibility

The Honorable John Conyers  
Chairman, Committee on the Judiciary  
House of Representatives

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ADAM B. SCHIFF, California  
DANIEL B. MAFFEI, New York  
LINDA T. SANCHEZ, California  
DEBBIE WASSERMAN SCHULTZ, Florida

ONE HUNDRED ELEVENTH CONGRESS

**Congress of the United States**  
**House of Representatives**  
**COMMITTEE ON THE JUDICIARY**

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RANKING MINORITY MEMBER

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JIM JORDAN, Ohio  
TED POE, Texas  
JASON CHAFFETZ, Utah  
THOMAS ROONEY, Florida  
GREGG HARPER, Mississippi

July 30, 2009

The Honorable Eric H. Holder  
Attorney General  
U.S. Department of Justice  
Washington, D.C. 20530

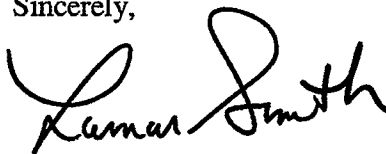
Dear Attorney General Holder:

I am very concerned about a report in the *Washington Times* today indicating that the Department ignored the recommendation of a number of career senior attorneys within the Division, including the leaders of the Voting Rights Section, when it decided to seek a dismissal in its voter intimidation case against the New Black Panther Party.

It appears that the career leadership of the Division advised Ms. King to reach a conclusion contrary to Department's ultimate decision in this matter. In light of this article, I renew my request that Voting Rights Section Chief Christopher Coates be made available to participate in the Department's upcoming briefing on this matter.

I look forward to your reply.

Sincerely,



Lamar Smith  
Ranking Member  
Committee on the Judiciary

cc: The Honorable John Conyers

**The Washington Times**

Close

Print

Originally published 04:45 a.m., July 30, 2009, updated 07:49 p.m., July 30, 2009

# EXCLUSIVE: No. 3 at Justice OK'd Panther reversal

Jerry Seper (Contact)

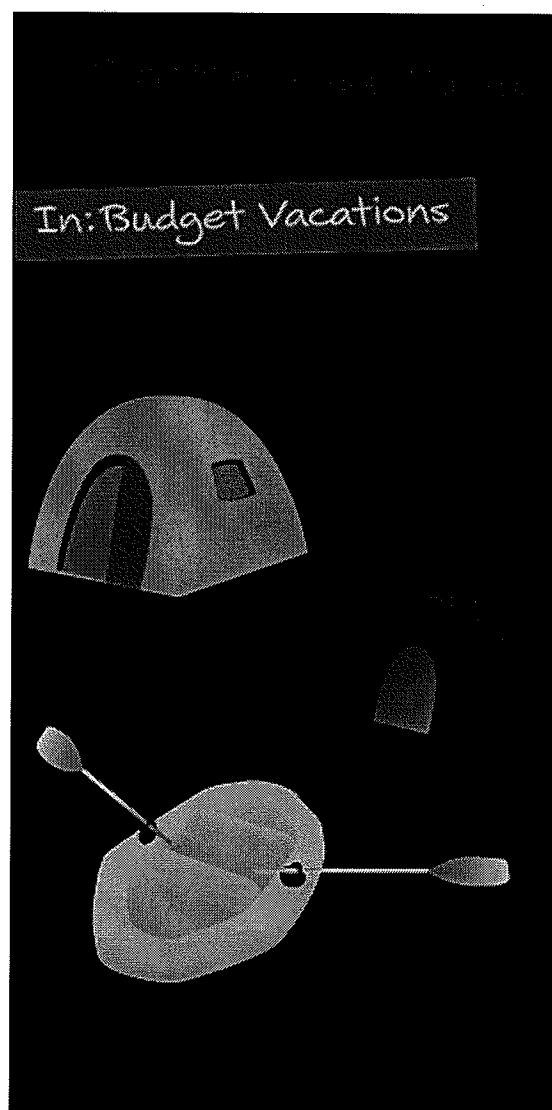
## EXCLUSIVE:

Associate Attorney General Thomas J. Perrelli, the No. 3 official in the Obama Justice Department, was consulted and ultimately approved a decision in May to reverse course and drop a civil complaint accusing three members of the New Black Panther Party of intimidating voters in Philadelphia during November's election, according to interviews.

The department's career lawyers in the Voting Section of the Civil Rights Division who pursued the complaint for five months had recommended that Justice seek sanctions against the party and three of its members after the government had already won a default judgment in federal court against the men.

Front-line lawyers were in the final stages of completing that work when they were unexpectedly told by their superiors in late April to seek a delay after a meeting between political appointees and career supervisors, according to federal records and interviews.

The delay was ordered by then-acting Assistant Attorney General Loretta King after she discussed



with Mr. Perrelli concerns about the case during one of their regular review meetings, according to the interviews.

Ms. King, a career senior executive service official, had been named by President Obama in January to temporarily fill the vacant political position of assistant attorney general for civil rights while a permanent choice could be made.

She and other career supervisors ultimately recommended dropping the case against two of the men and the party and seeking a restraining order against the one man who wielded a nightstick at the Philadelphia polling place. Mr. Perrelli approved that plan, officials said.

#### **TWT RELATED STORIES:**

- **Senior Republican wants answers on Panther Party case**
- **Career lawyers overruled on voter intimidation case**
- **Justice Dept. shifts from Bush era on voting, deportation**
- **Republicans hit Justice Dept. pursuit of potential torture probe**
- **EDITORIAL: Return of the Black Panther**
- **EDITORIAL: Flack Panthers**

Questions about how high inside the department the decision to drop the case went have persisted in Congress and in the media for weeks.

Justice Department spokeswoman Tracy Schmalzer told The Washington Times that the department has an "ongoing obligation" to be sure the claims it makes are supported by the facts and the law. She said that after a "thorough review" of the complaint, top career attorneys in the Civil Rights Division determined the "facts and the law did not support pursuing the claims against three of the defendants."

"As a result, the department dismissed those claims," she said. "We are committed to vigorous enforcement of the laws protecting anyone exercising his or her right to vote."

While the Obama administration has vowed a new era of openness, department officials have refused to answer questions from Republican members of Congress on why the case was dismissed, claiming the information was "privileged," according to congressional correspondence with the department.

Rep. Frank R. Wolf, Virginia Republican and a senior member of the House Appropriations Committee who has raised questions about the case, said he also was prevented from interviewing the front-line lawyers who brought the charges.

"Why am I being prevented from meeting with the trial team on this case?" Mr. Wolf asked. "There are many questions that need to be answered. This whole thing just stinks to high heaven."

Ms. Schmalzer said the department has tried to cooperate with Congress. "The Department responded to an earlier letter from Congressman Wolf in an effort to address his questions. Following that letter, the Department agreed to a meeting with Congressman Wolf and career attorneys, in which they made a good-faith effort to respond to his inquiries about this case. We will continue to try to clear up any confusion Congressman Wolf has about this case."

Ms. King and a deputy are expected to travel to Capitol Hill on Thursday to meet behind closed doors with House Judiciary Committee Chairman John Conyers Jr., Michigan Democrat, and Rep. Lamar Smith of Texas, the top Republican on the panel, to discuss continuing concerns about the case.

The department also has yet to provide any records sought by The Times under a Freedom of Information Act request filed in May seeking documents detailing the decision process. Department officials also declined to answer whether any outside groups had raised concerns about the case or pressured the department to drop it.

Kristen Clarke, director of political participation at the NAACP Legal Defense Fund in Washington, however, confirmed to The Times that she talked about the case with lawyers at the Justice Department and shared copies of the complaint with several persons. She said, however, her organization was "not involved in the decision to dismiss the civil complaint."

She said the National Association for the Advancement of Colored People has consistently argued that the department should bring more voter intimidation cases, adding that it was "disconcerting" that it did not do so.

Mr. Perrelli, a prominent private practice attorney, served previously as a counsel to Attorney General Janet Reno in the Clinton administration and was an Obama supporter who raised more than \$500,000 for the Democrat candidate in the 2008 elections. He authorized a delay to give department officials more time to decide what to do, said officials familiar with the case but not authorized to discuss it publicly. He eventually approved the decision to drop charges against three of the four defendants, they said.

At issue was what, if any, punishment to seek against the New Black Panther Party for Self-Defense (NBPP) and three of its members accused in a Jan. 7 civil complaint filed in U.S. District Court in Philadelphia.

Two NBPP members, wearing black berets, black combat boots, black dress shirts and black jackets with military-style markings, were charged in a civil complaint with intimidating voters at a Philadelphia polling place, including brandishing a 2-foot-long nightstick and issuing racial threats and racial insults. Authorities said a third NBPP member "managed, directed and endorsed the behavior."

*The election-day incident gained national attention when it was captured by a voter-fraud citizen activist group on videotape and distributed on YouTube (below).*



None of the NBPP members responded to the charges or made any appearance in court.

"Intimidation outside of a polling place is contrary to the democratic process," said Grace Chung Becker, a Bush administration political appointee who was the acting assistant attorney general for civil rights at the time the case was filed. "The Voting Rights Act of 1965 was passed to protect the fundamental right to vote and the department takes allegations of voter intimidation seriously."

Mrs. Becker, now on a leave of absence from government work, said she personally reviewed the NBPP complaint and approved its filing in federal court. She said the complaint had been the subject of numerous reviews and discussions with the career lawyers.

Mrs. Becker said Ms. King was overseeing other cases at the time and was not involved in the decision to file the original complaint.

A Justice Department memo shows that career lawyers in the case decided as early as Dec. 22 to seek a complaint against the NBPP; its chairman, Malik Zulu Shabazz, a lawyer and D.C. resident; Minister King Samir Shabazz, a resident of Philadelphia and head of the Philadelphia NBPP chapter who was accused of wielding the nightstick; and Jerry Jackson, a

resident of Philadelphia and a NBPP member.

"We believe the deployment of uniformed members of a well-known group with an extremely hostile racial agenda, combined with the brandishing of a weapon at the entrance to a polling place, constitutes a violation of Section 11(b) of the Voting Rights Act which prohibits types of intimidation, threats and coercion," the memo said.

The memo, sent to Mrs. Becker, was signed by Christopher Coates, chief of the Voting Section; Robert Popper, deputy chief of the section; J. Christian Adams, trial attorney and lead lawyer in the case; and Spencer R. Fisher, law clerk. None of the four has made themselves available for comment.

Members of Congress continue to ask questions about the case.

"If showing a weapon, making threatening statements and wearing paramilitary uniforms in front of polling station doors does not constitute voter intimidation, at what threshold of activity would these laws be enforceable?" Mr. Wolf asked.

Mr. Smith also complained that a July 13 response by Assistant Attorney General Ronald Weich to concerns the congressman had about the Philadelphia incident did not alleviate his concerns.

"The administration still has failed to explain why it did not pursue an obvious case of voter intimidation. Refusal to address these concerns only confirms politicization of the issue and does not reflect well on the Justice Department," Mr. Smith said.

Mr. Smith asked the department's Office on Inspector General to investigate the matter, and the request was referred to the department's Office of Professional Responsibility.

Lawmakers aren't alone in the concerns.

The U.S. Commission on Civil Rights said in a June 16 letter to Justice that the decision to drop the case caused it "great confusion," since the NBPP members were "caught on video blocking access to the polls, and physically threatening and verbally harassing voters during the Nov. 4, 2008, general election."

"Though it had basically won the case, the [Civil Rights Division] took the unusual move of voluntarily dismissing the charges," the letter said. "The division's public rationale would send the wrong message entirely — that attempts at voter suppression will be tolerated and will not be vigorously prosecuted so long as the groups or individuals who engage in them



fail to respond to the charges leveled against them."

The dispute over the case and the reversal of career line attorneys highlights sensitivities that have remained inside the department since Bush administration political appointees ignored or reversed their career counterparts on some issues and some U.S. attorneys were fired for what Congress concluded were political reasons.

Mr. Weich, in his letter to the congressman, sought to dispel any notion that politics was involved. He argued that the department dropped charges against three of the four defendants "because the facts and the law did not support pursuing" them. He said the decision was made after a "careful and through review of the matter " by Ms. King. He said:

- While the NBPP made statements and posted notice that more than 300 of its members would be deployed at polling places throughout the United States during the Nov. 4 elections, the statement and posting did not say any of them would display a weapon or otherwise break the law.
- While the complaint charged that the NBPP and Mr. Zulu Shabazz endorsed the activities at the polling places, the evidence was "equivocal" since both later disavowed what happened in Philadelphia and suspended that city's chapter after the incident.
- The charges against Mr. Jackson were dropped because police who responded to the polling place ordered Mr. Samir Shabazz to leave but allowed Mr. Jackson to stay. He also noted that the department approved "appropriately tailored injunctive relief" against Mr. Samir Shabazz for his use of the nightstick.

The injunction prohibits Mr. Samir Shabazz from brandishing a weapon outside a polling place through Nov. 15, 2012, and Ms. Schmalzer said the department "will fully enforce the terms of that injunction."

On its Web page, the NBPP said the Philadelphia chapter was suspended from operations and would not be recognized until further notice. It said the organization did not condone or promote the carrying of nightsticks or any kind of weapon at any polling place.

"We are intelligent enough to understand that a polling place is a sensitive site and all actions must be carried out in a civilized and lawful manner," it said.

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- **Republicans hit Justice Dept. pursuit of potential torture probe**
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Witnesses who supported the Justice Department case said they were surprised by the reversal.

Stephen R. Morse, a blogger hired by Republicans to be at the polls and who videotaped the confrontation, said the NBPP members blatantly used racial insults on would-be voters and other poll watchers, telling one man, "Cracker, you about to be ruled by a black man."

Mr. Morse, a University of Pennsylvania alumnus, said he was "outraged" that the complaint was dismissed, saying he hoped Democrats would join Mr. Smith and Mr. Wolf in attempting to ensure that the incident "doesn't become a partisan issue, but rather an issue of right vs. wrong."

Chris Hill, national director of operations for a Gathering of Eagles, an organization dedicated to the support of U.S. troops, said the NBPP members visibly intimidated voters with racial slurs as they tried to enter the building.

Mr. Hill, a U.S. Army veteran who also served as a Philadelphia poll watcher for Republicans, said several voters at the location said they were afraid. He said the NBPP members tried to deny him access to the poll although he was a certified poll watcher, telling him, "White power don't rule here."

A Justice Department memo also says that a black couple, Larry and Angela Counts, both Republican poll watchers, told authorities they were scared, worried about their safety and concerned about leaving the polling place at the end of the day because of the actions of the NBPP members. Mrs. Counts said she wondered whether someone might "bomb the place" and Mr. Counts said the NBPP members called him a "race traitor," the memo said.

U.S. District Judge Stewart Dalzell in Philadelphia entered default judgments against the NBPP members April 2 after ordering them to plead or otherwise defend themselves. They refused to appear in court or file motions in answer to the government's complaint. Two weeks later, the judge ordered the Justice Department to file its motions for default judgments by May 1 — a ruling that showed the government had won its case.

The men also have not returned calls from The Times seeking comment.

On May 1, Justice sought an extension of time and during the tumultuous two weeks that followed the career front-line lawyers tried to persuade their bosses to proceed with the case.

The matter was even referred to the Appellate Division for a second opinion, an unusual event for a case that hadn't even reached the appeals process.

Appellate Chief Diana K. Flynn said in a May 13 memo obtained by The Times that the appropriate action was to pursue the default judgment unless the department had evidence the court ruling was based on unethical conduct by the government.

She said the complaint was aimed at preventing the "paramilitary style intimidation of voters" at polling places elsewhere and Justice could make a "reasonable argument in favor of default relief against all defendants and probably should." She noted that the complaint's purpose was to "prevent the paramilitary style intimidation of voters" while leaving open "ample opportunity for political expression."

An accompanying memo by Appellate Section lawyer Marie K. McElderry said the charges not only included bringing the weapon to the polling place, but creating an intimidating atmosphere by the uniforms, the military-type stance and the threatening language used. She said the complaint appeared to be "sufficient to support" the injunctions sought by the career lawyers.

"The government's predominant interest ... is preventing intimidation, threats and coercion against voters or persons urging or aiding persons to vote or attempt to vote," she said.

The front-line lawyers, however, lost the argument and were ordered to drop the case.

Bartle Bull, a civil rights activist who also was a poll watcher in Philadelphia, said after the complaint was dropped, he called Mr. Adams to find out why. He said he was told the decision "came as a surprise to all of us" and that the career lawyers working on the case feared that the failure to enforce the Voting Rights Act "would embolden other abuses in the future."

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